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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,728	12/12/2003	Neil John Graham	51,179	9728

7590 09/14/2006

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EXAMINER

WERNER, JONATHAN S

ART UNIT PAPER NUMBER

3732

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/733,728

Applicant(s)

GRAHAM, NEIL JOHN

Examiner

Jonathan Werner

Art Unit

3732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 8/31/06 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-31.
Claim(s) withdrawn from consideration: _____.

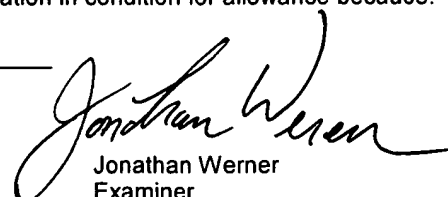
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


CRIS L. RODRIGUEZ
PRIMARY EXAMINER


Jonathan Werner
Examiner
TC 3700

Continuation of 3. NOTE: Examiner notes that the crossed-out portions of Applicant's amended claims should be "0.020" instead of "0.022." Because the amended range now encompasses new values that were not fully searched, a new search and consideration is necessary. Applicant claims an arch bar that is "attached to a fixed orthodontic appliance by piggybacking on the labial side of an installed orthodontic appliance." However, Examiner contends that it is not clear how the arch bar can be fixed to said appliance by piggybacking on an installed orthodontic appliance as written in the claim language since it is not disclosed whether the two appliances are distinct - i.e. how piggybacking the arch bar to an installed appliance can attach it to a supposedly separate fixed appliance. Applicant remarks that the terms "fixed orthodontic appliance" and "installed orthodontic appliance" are synonymous, even though the claim language, as written, clearly positively claims each appliance as though they are separate and distinct. In each independent claim of the present invention, Applicant has failed to structurally differentiate between an arch wire versus an arch bar aside from the claimed dimensional differences - of which an arch wire can also have. Applicant has also further clarified what is meant by the term "fixed orthodontic appliance" as being "comprised of brackets ... arch wires ... and ties." However, support for this assertion is not present in Applicant's specification or claims, wherein one is led to interpret an orthodontic appliance as being a singular component, such as an arch wire for example. Support is given to this interpretation in Applicant's claim language: "a tying means ... used to attach the accessory arch bar to an orthodontic arch wire or directly to orthodontic brackets." Each element is separately positively claimed by Applicant, thus further confusing the matter of what said "fixed orthodontic appliance" really is. Furthermore, Examiner does not understand how the terms "piggybacking" and "accessory" can be "synonymous" when read contextually within the claim. The term "accessory" describes the purpose of the arch bar, whereas the term "piggybacking" describes how the "accessory arch bar" is attached to the orthodontic appliance. The remark by Applicant that said terms are "synonymous" is not supported in the specification. Lastly, Applicant remarks that Examiner is incorrect in his assertion that "applying torque to a component is the same as applying force in such a way as to produce rotation or torsion." However, an understanding of physics teaches that torque is "a force that produces or tends to produce rotation or torsion" (Merriam-Webster dictionary). Terms such as torsion and torque are commonly used by those having ordinary skill in the field of orthodontics. The shape of a bracket, i.e. a bracket having vertical slots versus a bracket having horizontal slots, does not change the way a torquing force is applied to said bracket once an arch bar or an arch wire is secured thereto, since either said bar or wire are statically secured to the bracket and become essentially one component when assembled.